

TOWN OF MOUNT AIRY BOARD OF APPEALS

FINDINGS AND DECISION

CASE NO. MA-BOA-2021-2

HEARING ON SETBACK VARIANCE

DECEMBER 14, 2021

Applicants: CBI Homes, LLC (“Applicant”)

Location: Lot 53, Park View Subdivision, 299 Park Avenue, Mount Airy, MD 21771 (“Lot 53”)

Current Zoning: R3 District

Current Use: Vacant

Proposed Use: Residential Dwelling

WHEREAS, Applicant seeks approval of a reduction of the yard setback along Frederick Avenue from 20’-0” to 12’-0” pursuant to an application for variance; and

WHEREAS, the subdivision plat for the Park View subdivision, containing Lot 53, was recorded among the land records of Carroll County, Maryland on November 7th, 1915 at Platbook 1B, Page 115; and

WHEREAS, Lot 53 is unimproved; and

WHEREAS, Applicant intends to improve Lot 53 by constructing one residential home; and

WHEREAS, Lot 53 is 50’ wide and 160’ +/- deep and is bounded at the rear of the lot by a 12’-0” alley shown on the record plat which the Applicant intends to use to access the rear of the property; and

WHEREAS, Lot 53 is a corner lot adjoining Park Avenue and Frederick Avenue; and

WHEREAS, pursuant to the Town Code, Chapter 112 “Zoning”, Section 112-56, lots that abut more than one street “shall maintain the front yard setback required by the zoning district in which the lot is located along each street frontage[]”; and

WHEREAS, pursuant to the Town Code, Chapter 112 “Zoning”, Sections 112-26(d)(3)(a)(iii) and 112-20, the setback along Frederick Avenue is therefore required to be 20’-0”; and

WHEREAS, Applicant seeks a variance reducing the setback for the yard along Frederick Avenue to 12 feet; and

WHEREAS, Town Staff recommended approval of the variance with the following conditions: (1) that the single family home to be constructed on Lot 53 must match the existing neighborhood and meet all other codes for construction for Carroll County and the Town of Mount Airy, (2) Applicant must provide as shown on the Plot Plan attached to the Staff Report the area of Dedication to the Town by deed to the Town by metes and bounds, and (3) the Applicant shall provide the proposed 4’-0” sidewalk along Frederick Avenue to the edge of the property line and connect to the existing side at the corner of Park and Frederick Avenues; and

WHEREAS, on December 14, 2021, the matter of the variance application came before the Town’s Board of Appeals pursuant to the Town Code, §§ 112-61; and

WHEREAS, the following members of the Board of Appeals were in attendance: Peter Helt (Chair), Judi Stull, Keith Gahle, and Diane Gleason; and

WHEREAS, one position of the Board of Appeals is vacant; and

WHEREAS, all witnesses were duly sworn; and

WHEREAS, the following witnesses testified for Applicant with opportunity for cross-examination:

Rob Scranton, managing Member for Applicant

WHEREAS, the following residents, adjoining property owners asked questions:

Steve Ebor; and

WHEREAS, the following exhibits were introduced and are hereby marked and attached hereto:

Exhibit 1 - Staff Report, December 14, 2021 with the following attachments:
overhead and delineation of Lot 53 with legend, Park View Plat recorded
at Plat Book 1B, Page 115, Plot Plan for Lot 53 and ½ of Unimproved 12'
Alley, Park View, SDAT Real Property Data Sheet for Lot 53

WHEREAS, John Breeding, Town Zoning Administrator and Community Planning
Administrator provided a summary of the Staff Report and recommendation; and

WHEREAS, in summary, **Rob Scranton** testified that he was asking for a 12 foot setback
along Frederick Avenue noting that the property line falls short of the base curb; that he is in
reality only asking for 4 extra feet of set back from the curb since the Town owns the property
between the property line and the base curb; most of the lots in subdivision are wider than 20
feet, which caused the practical difficulty laying out Lot 53 on the recorded plat and caused Lot
53 to be more narrow than the other lots; the home that he intends to construct will reflect the
character of the surrounding homes; in response to a question by Board Member Stull testified
that putting in sidewalk to the curb will cause the setback from the sidewalk to be only 16 feet,
and thus in asking for a 12 foot setback, he is really asking for only 4 extra feet; he confirmed
that the alley will be used to access the property; he testified that the lot and subdivision were
created in 1915; in response to questioning by Mr. Eboru about having the ability to match this
home to existing homes given that of the 74 lots on the recorded plat quite a lesser number of
homes were built and exist today because a number of the homes are on multiple lots whereas
this home and three others Mr. Scranton plans to construct in the subdivision will each be on
single lots, and given that the alleyway will stop at Lot 52 and serve three homes on one
driveway, Mr. Scranton testified that several lots in the subdivision are on single lots and that Lot
53 is in the R3 District, a fairly dense residential zone; in response to questioning, Mr. Scranton
further testified that he is currently evaluating whether the existing home on Lot 51 will remain,
and that although the lots in the subdivision are lots of record, they are still subject to the setback
requirements in the current Town Code; Mr. Scranton testified that his two other lots on which
he intends to build will not require variances; and he further testified that the lot and setback
requirement of 20 feet would create an unnecessary hardship or practical difficulty in
constructing a residential home, and that:

- (1) That there are unique physical conditions including the narrowness of the lot
peculiar to the particular property that the unnecessary hardship or practical
difficulty is due to such conditions.
- (2) That because of such physical circumstances or conditions, there is no possibility
that the property can be developed in strict conformity with the provisions of the
Town's Zoning Chapter applicable to the lot, and that the authorization of a
variance is therefore necessary to enable the reasonable use of the property.
- (3) That such unnecessary hardship or practical difficulty has not been created by the

applicant or the applicant's predecessor in title.

- (4) That the variance, if authorized, will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare:
- (5) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.
- (6) The variance is sought is not so general or recurrent a nature to make reasonably practicable the formulation of a general regulation for such conditions; and

WHEREAS, the proceedings were video and audio recorded.

NOW, THEREFORE, the Board of Appeals upon receiving the evidence and upon motion to approve the Application, unanimously voted (4 votes to zero) to approve the Application and conditionally grant the variance for the Property, having made the following findings and determinations:

A. .That Applicant established by a preponderance of the evidence that:

- (1) There are unique physical conditions including the narrowness of the lot peculiar to the particular property that the unnecessary hardship or practical difficulty is due to such conditions.
- (2) Because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the Town's Zoning Chapter applicable to the lot, and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.
- (3) Such unnecessary hardship or practical difficulty has not been created by the applicant or the applicant's predecessor in title.
- (4) The variance will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare:
- (5) The variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.
- (6) The variance is sought is not so general or recurrent a nature to make reasonably

practicable the formulation of a general regulation for such conditions.

- B. That the Applicant be and is hereby granted a variance as to the setback for the yard abutting Frederick Avenue from 20 feet to 12 feet, subject to the following conditions:
- (1) That the single family home to be constructed on Lot 53 must match the existing neighborhood and meet all other codes for construction for Carroll County and the Town of Mount Airy;
 - (2) Applicant must provide as shown on the Plot Plan the area of Dedication to the Town by deed to the Town by metes and bounds; and
 - (3) Applicant shall provide the proposed 4'-0" sidewalk along Frederick Avenue to the edge of the property line and connect to the existing side at the corner of Park and Frederick Avenues
- C. The exhibits and sign in sheet for witnesses are attached hereto.

ATTEST:

John Breeding,
Zoning Administrator and
Community Planning Administrator
Town of Mt. Airy

Peter Helt, Chair
Town of Mount Airy
Board of Appeals